280.0000 GIFTS, MARKETING AIDS, PREMIUMS AND PRIZES—Regulation 1670
See also Trading Stamps and Related Promotional Plans.

280.0020 **Advertising Material.** Advertising material purchased by local dealers from their out-of-state manufacturer is subject to tax. 7/7/53.

280.0040 **Advertising Material—Gifts.** Advertising or promotional material shipped or brought into the state and temporarily stored here prior to shipment outside state is subject to use tax when a gift of the material made and title passes to the donee in this state. When the donor divests itself of control over the property in this state the gift is regarded as being a taxable use of the property. 10/11/63.

280.0060 **Advertising Material—Gifts.** Advertising or promotional material shipped or brought into this state is subject to use tax when a gift of the material is made and title passes to the donee in this state. An out-of-state company, using its own trucks, transports the advertising and promotional materials of its affiliated California retailer from a point outside California to the United States Postal Service (USPS) in this state. The USPS delivers the materials to potential customers who receive the promotional materials for no consideration. In this case, the California retailer divests itself of control over the property at the point where the merchandise is delivered by the out-of-state company, on behalf of the California retailer, to the USPS in this state. The delivery to the USPS constitutes the completion of a gift since the advertising or promotional material is distributed free of charge to the donees. The act of giving the material away at no charge is a use in this state and such use is taxable. 3/28/02.

280.0080 **Advertising Material—Post Cards.** The California use tax does not apply to amounts paid to an out-of-state direct mail advertising firm for post cards mailed from out-of-state to California customers. 11/22/55.

280.0100 **Advertising Materials and Catalogs.** Where a foreign corporation ships advertising materials to the office, branch, or salesman of such out-of-state corporation in this state, at which point they are used or distributed, the use tax applies to the cost of the material to the corporation. If the corporation itself manufactures the materials, the cost of the raw materials is the taxable amount.

In the case of catalogs, the printing charge made by the printer would be the taxable amount, together with any other charges such as covers, binding, etc. 4/26/56.

280.0160 **Beer Can Openers,** furnished by breweries to retailers with beer, are not regarded as ‘‘self consumed’’ by the breweries. 10/2/50.

280.0180 **Book Matches.** Where a restaurant furnishes its patrons with book matches advertising the restaurant, some of which are furnished with purchases of cigarettes, while others are sometimes taken gratis by diners, the restaurant may purchase the same ex-tax as for purpose of resale.

Thereafter, match books sold with cigarettes as a premium article will be considered included in the sales price of the cigarettes. Those given away to noncigarette purchasers are considered self-consumed. 9/30/53.

280.0185 **Bookmarks Sold for $2.00 ‘‘Postage and Handling’’.** A taxpayer located in California offers a bookmark to customers for a $2.00 charge, designated as postage and handling. Most of the orders received for the bookmark are from out of state.

Assuming that the charge for the bookmark is 50 percent or more of its cost, the taxpayer is considered to be selling the bookmarks rather than consuming them. (Regulation 1670 (b).) Accordingly, when a bookmark is sent to a California customer through the U.S. Mail, the amount of postage shown on the package is considered to be a nontaxable transportation charge. For example, when a bookmark is sent to a California customer, if the postage on the envelope is shown as 25 cents, then the taxable gross receipts from the transfer is $1.75. If the bookmark is mailed to a customer located outside California, tax does not apply to any of the $2.00 charge. 12/5/88.

280.0187 **Contributions for Gifts.** A nonprofit organization with IRS section 501(c)(3) status is embarking on a solicitation campaign. Each contributor will be offered a selection of various gifts determined by the amount of contribution. That is, the larger the contribution, the larger the ‘‘gift.’’ The gift will be delivered by a representative in California to the contributor.

Generally, items furnished for a suggested donation are regarded as sold for purposes of sales and use tax. (See Annotation 495.0370 (10/16/72).) However, under certain circumstances where there is a significant disparity between the amount of the contribution and the retail value of the property received, only part of the amount of the contribution will be included in the measure of tax. For example, when (1) a person makes a contribution and receives tangible personal property upon making the contribution, (2) the primary purpose of the contribution is to make a donation to support the charity, and (3) there is a significant disparity between the amount of the contribution and the retail value of the property received in connection with the contribution, there is a sale of tangible personal property, but the measure of tax is the sales price of the property to the nonprofit organization. If the nonprofit organization had paid sales tax reimbursement or use tax on its purchase of the property, no further tax would be due. If the nonprofit organization purchased the property for resale, the sales tax is due on the nonprofit organization’s purchase price of the property when it resells it. The nonprofit organization may collect sales tax reimbursement from its contributors if the contract of sale so provides. 3/7/96.

280.0190 **Car Wash.** A ‘‘free’’ car wash which accompanies a taxable sale of gasoline is not a ‘‘premium’’ as defined by Regulation 1670(c) because it is not tangible personal property. The gross receipts from the sale of the gasoline cannot be reduced by the value of the intangible service given. 10/10/72.

280.0200 **Cash Discounts—Punchcards—Cash Prizes.** Punchcards were purchased by a grocery store, which distributed them to customers and nonpurchasing visitors. Cards could be redeemed by customers after making $100 of purchases, as indicated by punches on the cards or cards could be redeemed by nonpurchasing visitors by accumulating weekly ‘‘free’’ punches. Upon redemption each customer or visitor received a cash prize of $1 to $100, the amount designated under a seal on each card, which was opened by a store employee. The store was the consumer of the punchcards. The amounts of such cash prizes were not cash discounts, inasmuch as receipt of such amounts did not necessarily depend on the recipient having made any purchases and the amounts received bore no relation to the amount of purchases actually made by a customer recipient. 9/21/64.

280.0201 **Casino Gifts.** A California taxpayer purchases merchandise from a supplier in Utah. The taxpayer sells the merchandise to casinos in Nevada. The casinos give the merchandise away as promotional items. Some of the merchandise is shipped directly by the Utah supplier to the Nevada casinos. Some merchandise is shipped by the Utah supplier directly to casino patrons, some of whom reside in California. Some merchandise is shipped to the taxpayer in California who subsequently ships it to the Nevada casinos.

Merchandise shipped to Nevada or directly to California casino patrons by the Utah supplier is not subject to tax because the sale does not take place in California and the use occurs in Nevada when the casinos make gifts of the merchandise. Merchandise shipped from Utah to the taxpayer and then shipped by the taxpayer to the casinos in Nevada is not subject to tax because the sales are exempt sales in interstate commerce. If the taxpayer makes deliveries from its California stock to casino patrons in California, tax would apply based on the retail selling price of the merchandise. 8/5/94.

280.0205 **Catalogs.** A California taxpayer purchases catalogs from an out-of-state printer (vendor) and has the catalogs sent directly to its California facilities where they are stored for future shipment nationwide. The catalogs were brought into this state approximately 90 days after purchase and were subsequently shipped free of charge from California to potential customers nationwide.

The taxpayer made a gift of the catalogs in California when it withdrew the catalogs from its California warehouse and shipped them to prospective customers by common carrier or U.S. Mail. Thus, use tax applies. If the taxpayer had first shipped the catalogs to its out-of-state warehouse, and then shipped them

to prospective customers, section 6009.1 would exclude the purchase from tax since petitioner's sole use in California would have been to store them for subsequent use solely outside the state.

Even though the catalogs may have entered this state 90 days after the date of purchase, the taxpayer first functionally used the catalogs in California when they were given to prospective customers. There was no functional use outside the state. The taxpayer made only two uses, storage and gifting, and both occurred in California.

Accordingly, the use of the catalogs by the taxpayer is subject to use tax measured by the sales price of the catalogs to the taxpayer. 1/4/94.

280.0220 **Cereal Manufacturers.** A cereal manufacturer advertises on its cereal boxes that premiums (e.g., jump ropes, space weights) may be purchased for an agreed price, plus proof of purchases (box tops) of the cereal. The cereal manufacturer contracts with the supplier of the premiums that the supplier will (1) purchase the premiums; (2) handle the orders; (3) mail the premiums; (4) collect the price; (5) pay the cereal manufacturer a commission on a per sale basis; (6) handle complaints; and (7) maintain premium quality standards. Orders are addressed by reference to the premium offer (e.g., jump rope offer, space weights offer, etc.) at a post office box. The advertising describes the premium offer as made by the cereal manufacturer. The advertising does not identify the supplier of the premiums.

Given such facts, the cereal manufacturer is holding itself out to customers as the retailer of the premiums (chiefly by product identification) and is liable for the sales tax, or has a duty to collect use tax if nexus with California is present. For the cereal manufacturer to avoid the sale tax or use tax collection duty, the advertising on the cereal box must clearly identify the premium supplier for whom the advertising is performed so that it is clear to customers that the cereal manufacturer is merely providing advertising for an identified premium retailer. 7/21/87.

280.0240 **Complimentary Beer Furnished by Breweries.** Breweries who provide beer free of charge to their employees pursuant to union contracts or otherwise give away beer are subject to tax measured by their purchase price of the nonexempt ingredients. However, ingredients which are food products are exempt even though incorporated into a taxable beverage. Such ingredients as sugar, corn grits, soy bean flakes, etc., are food products meeting this test. Hops are to be considered a flavoring extract and therefore a food product. Chemical additives are not food products and are subject to tax. 9/26/69. (Am. M99–1).

280.0260 **Complimentary Drinks.** Sales to airlines of alcoholic beverages and mixes to be furnished as complimentary drinks to their passengers are subject to sales tax. 11/19/63.

280.0280 **Complimentary Drinks.** When a tavern owner gives to his customers free drinks of liquor purchased for resale, he is the consumer thereof and liable for the tax measured by the purchase price to him of the liquor. The measure of tax to be reported does not include any amount in addition to the actual purchase price of that quantity of liquor given away. 1/19/67.

280.0300 **Contest.** There is no tax due on the transfer of an automobile to a contest winner when sales tax has been paid on the prior transfer of the automobile to the promoter of the contest. The transfer to the contest winner is not a taxable sale because the automobile is acquired by chance or skill, and there is no use tax liability because the automobile is received as a gift or premium rather than a purchase. 8/1/67.

280.0320 **Contest.** A manufacturer conducts a contest as a result of which some of his merchandise is delivered to California winners by the manufacturer's distributor. The manufacturer reimburses the distributor of this merchandise. The manufacturer is the consumer of the merchandise prizes and the distributor has made a taxable retail sale thereof to the manufacturer, the measure of tax being the amount for which the distributor is reimbursed by the manufacturer. 2/10/55.

280.0340 **Contest.** Winner of a contest receives a diamond valued at $50. He was required to have the diamond set in a ring sold by the donor at a total price of $129.50 less allowance of $50 for the diamond, leaving a balance of $79.50. The donor has given away the diamond for advertising purposes and is the

consumer thereof. Accordingly the measure of the tax is the $79.50 plus the cost to the donor of the diamond. If the donor had purchased the diamond under a resale certificate, he would be required to include its cost in his measure of tax. 5/11/54.

280.0345 **Contest Prize—Automobile.** An auto manufacturer requests that a local dealer deliver an auto to the winner of a contest. The car is to be delivered from the dealer's inventory. The winner has no need for the auto and would like the dealer to keep it and give him cash instead. In as much as the winner will not receive either title or possession of the auto, there is no liability for sales or use tax. 3/26/93.

280.0350 **Coupons and Gift Certificates.** An inquiry was received as to how sales tax applies in certain situations where coupons are tendered to a retailer at the time of purchase of tangible personal property.

If a retailer distributes coupons to the public or some segment of the public without charge, tax does not apply to the discount allowed upon redemption of the retailer's own coupon. On the other hand, where the retailer redeems coupons issued by manufacturer or by another third party, the measure of tax includes the amount collected from the customer as well as the amount collected by the retailer from the manufacturer or other third party.

Tax does not apply to the sale of gift certificates. Upon redemption of the gift certificates, the value of the certificate is includable in the measure of tax. Gift certificate transactions are not treated as discount transactions but regarded as credit memorandums. 12/19/78.

280.0356 **Dealer Incentive Program.** Company A's client established a dealer incentive program whereby dealers are offered various premiums based on the amount of merchandise purchased by them for resale. Upon making a purchase, a dealer selects his premium from a catalog or brochure and submits a special order form along with the merchandise order to the client. The client notes its approval and forwards the special order to A. A sends an order to an out-of-state supplier of the premium who ships the premium directly to the dealer and bills A for the premium. A in turn obtains reimbursement from its client at A's cost plus 10 percent.

The client is the retailer of the premium delivered to its dealers. Tax applies with respect to the sale of premium items delivered to California dealers but not with respect to premium items delivered to out-of-state dealers. It is immaterial that the premium items delivered to California dealers may have been shipped directly to the dealers from an out-of-state supplier. Tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the client (A's cost + 10%), in the absence of any evidence that the client is receiving a larger sum. 1/6/78.

280.0360 **Deposit of Gift in Mail** out-of-state passes title at that time, and donor is not liable for use tax. 7/18/50.

280.0373 **Discount of Catalog Price Against First Purchase.** A retailer sells catalogs to customers and agrees to deduct the amount paid for the catalogs against the customer's first purchase.

The transfer of a catalog for a consideration is a sale of tangible personal property. The charge for the catalog is included in the retailer's gross receipts at the time of the transfer of the catalogs. Later, when the customer purchases merchandise and is given a discount measured by the price he/she paid for the catalog, that discount will be considered to be an adjustment to the price of the merchandise and may be excluded from the sales price of the merchandise. If the two items are sold at the same time, the merchandise and the catalog, the net result is the same as stated above. 4/21/82.

280.0380 **Discount Coupons.** A promoter contracts with restaurants and amusement operators to distribute discount coupons redeemable for $5.60 in meals and/or admissions. The promoter purchases the coupons from a printer for the fabricated cost thereof. The promoter sells coupons for $4.80 each to distributors who use them at the contracting restaurants or amusements as payment for $5.60 worth of meals or admissions. The restaurant or amusement operator returns each coupon to the promoter who pays

the restaurant or operator $4.40. The promoter is the consumer of the printed tickets and subject to tax measured by the amount paid by him for the printed tickets. 8/31/66.

280.0390 **Donations.** A person who donates property is the consumer of that property for purposes of the application of sales and use tax. Consumption occurs when title passes from the donor to the donee. Thus, if a donor transfers property to a carrier in California or places it in the mail in California, the donor has made a use of the property in California and he/she is liable for use tax if he/she had purchased the property extax under resale certificate or outside California. The destination of the property, whether in California or outside California has no significance. If delivered in California there is no exception on account of a subsequent shipment of property outside California. Conversely, if the property was shipped by common carrier from outside California or placed in the mail outside California, the donor is regarded as having consumed the property outside California. No tax is due from donees receiving and using the property in California since the donees did not purchase the property. 1/8/92.

280.0480 **Enclosures.** Circulars containing both advertising material and directions for use of four products of a manufacturer, enclosed in a box containing only one of such products, is clearly advertising as to the other products and as such, is used by the manufacturer and subject to tax. 5/11/54.

280.0500 **Enclosures.** If the enclosure is primarily for advertising purposes the tax is applicable. If, however, the enclosure is in the nature of directions, instructions, or information desired or needed by the consumer of the goods, the mere fact that advertising is also contained in the enclosure will not cause the tax to apply. 5/29/51.

280.0520 **Enclosures.** Notice of Guarantee placed in garment sold, if not primarily advertising material, is regarded as resold with garment. 10/8/51.

280.0523 **Entertainment Books.** Entertainment Books are a collection of coupons to various establishments, such as restaurants, movie theaters, sporting events and stores. The sale of such coupon books are not regarded to be sales of tangible personal property. The coupons in Entertainment Books are merely evidence of an intangible right—a record or indicia of the right to services or tangible personal property at a reduced price. The sale of Entertainment Books are not subject to sales tax. 6/30/04. (2005–2).

280.0525 **Envelopes Used to Mail Film Sold for Processing.** A mail order company makes an initial sale of film for a pre-paid amount. Included with the film mailed to customers is an informational brochure and two envelopes which are used to return the exposed film for processing. The envelopes are preaddressed to the mail order company. Attached to the envelopes are two tear-off items. One is a ‘‘return address label’’ upon which the customer fills in his name and address and encloses in the envelope with the exposed film for processing. The other attachment is a ‘‘print reorder form’’ to be filled in and returned in the envelope. One side of the envelope contains a statement limiting the mail order company’s liability regarding the film. The other side is completely covered with printing as a ‘‘mail order form’’ to be used by the customer to order processing for prints or slides and/or new rolls of film. The customer places the exposed film, payment, and order form in the envelopes provided and mails them to the mail order company. The mail order company upon receipt, discards the envelope, processes the exposed film and fills the customers’ order.

The mail order company is the consumer of the envelopes. This conclusion is based on the finding that the primary function of these envelopes is to solicit sales of other products. The pre-paid film customers did not bargain for the acquisition of the envelopes. Once the mail order company obtained the purchase price and the customer acquired the new film, that sale transaction was complete. At that time there was no agreement that the customer would return the exposed film to the mail order company for processing, including the sale of slides and/or prints. When, and if, subsequent actions occurred, these actions were pursuant to a different agreement among the parties for a separate consideration. The envelopes functioned as an advertisement, order-form and container for that subsequent transaction. The envelopes were not, therefore, a part of the original transaction involving the sale of the new film but were provided by the mail order company in anticipation of future sales. 10/31/85.

280.0540 **Free Goods.** A person distributing containers and matches without charge is the consumer thereof and the sales tax or use tax, as the case may be, applies with respect to the purchase of the merchandise. 5/19/54.

280.0560 **‘‘Free’’ Goods in Exchange for Coupon.** A grocer gives a customer a ‘‘free’’ bar of soap in exchange for a coupon issued by the soap manufacturer. This transaction is considered to be a sale, not a gift, because the coupon represents consideration given by the soap manufacturer to the grocer for the sale of the soap. The soap manufacturer reimburses the grocer for the value of the soap given to the customer in exchange for the coupon. The value assigned to the coupon constitutes the consideration upon which the tax is computed. 11/24/69. (Am. 2005–2).

280.0565 **Free Merchandise Based Upon Volume of Purchases.** A taxpayer’s customers earn coupons based on their previous purchases. These purchases are entirely subject to sales tax. The coupons entitle the customers to receive a various number of units of free merchandise. Upon redemption of the coupons, if the number of units purchased exceeds the number of free units of merchandise allowed, the customer is charged for the remaining units with tax reimbursement computed on the balance. Under these conditions, the free units are regarded as being sold with the previous units, which entitled the customers to obtain the free units. Since sales tax is reported on all the consideration received for the sale of the previous units, no further tax is due. 1/24/89.

280.0570 **Fund Raising Organization—Supplies and Premiums.** A fund raising organization sells goods through student groups and operates in a manner which makes it the retailer of the goods sold through the student solicitors. In connection with these fund raising activities it provides the following category of goods:

(A) Catalogs, posters, and other such items which it ships from its California warehouse to its employees for distribution to school groups.

(B) Samples of prizes and merchandise.

(C) Envelopes, mailing labels and flyers which are shipped from the organization’s California warehouse directly to the school groups.

(D) Prizes which are awarded to students and sponsors.

All this property has been purchased ex-tax either under a resale certificate or from an out-of-state supplier.

The fund raising organization is responsible for the tax on these items as follows:

(1) It is the consumer of catalogs, posters and other such items. While the total amount the organization received for all of the merchandise includes the recouped cost of these items, there is no specific consideration for these items. The school groups pay only for merchandise sold. If no items are sold or the event is canceled, the school groups pay nothing.

(2) The fund raising organization is liable for sales tax on the items it improperly purchased in California under a resale certificate because it knowingly gave a resale certificate which it had been advised by the Board was improper. (Section 6094.5.) It is responsible for use tax on the items purchased out of state and shipped to in-state employees for delivery to in-state schools.

(3) Those items purchased out of state and sent to employees out of state to be delivered to school groups out of state are not subject to tax under the provisions of section 6009.1 because the gift of the merchandise took place out of state.

(4) The fund raising organization is the consumer of the samples. While the samples were used for demonstration and display, they were not held for sale in the regular course of business. They were

purchased in small lots for the limited purpose of being used as samples and upon obsolescence they were destroyed or given away. No attempt was made to sell them.

(5) The fund raising organization is liable for tax on the flyers, mailing labels and envelopes in the same manner as the catalogs, etc., except that the section 6009.1 exclusion is not available. Because the property was sent directly to the student groups, the gift took place in California when the property was deposited in the mail. Accordingly, there was a ‘‘use’’ in California and the property is subject to tax, not withstanding any subsequent out-of-state shipment.

(6) The fund raising organization is the retailer of the prizes since the award of such prizes was dependent upon the number of sales made by the participants or by other goals. Accordingly, valid consideration was received. Prizes shipped out of state are exempt as sales in interstate commerce and the in-state deliveries are subject to tax measured by the stated value of the prize. If there is no stated value, the fund raising organization’s cost will be presumed to be the selling price. 4/26/90.

280.0580 **Gift Certificates.** A gift certificate purchased with cash by a customer from a retailer is evidence of an intangible right and therefore not subject to sales tax. The application by a donee of such a certificate to his charge account does not constitute ‘‘merchandise returned’’ because there is no sale of merchandise. 1/25/61.

280.0581 **Gift Certificates.** A public television station as part of its fund raising activities conducts an annual auction. A merchant who wishes to contribute pledges a specified amount which the station incorporates into a gift certificate. The certificate is made redeemable in merchandise at the merchant’s store. The station auctions the certificate to the highest bidder who, in turn, redeems the certificate at the merchant’s store. The following example illustrates an application of the sales tax.

The station receives a gift certificate donation for $200 worth of jewelry. The gift certificate is purchased at the auction for $150. The certificate is exchanged for a ring retailing for $180. The buyer pays $150 to the station and $11.70 (6.5% of $180) to the donor.

It is concluded that the above example illustrates the proper application of sales tax. The following language which was proposed to be included on the gift certificate is also approved: ‘‘Tax, if applicable, will be collected by the donor. The tax is based on the price of the merchandise received.’’ 3/11/81.

280.0585 **Gift Certificates.** A retailer employs a promotional program that rewards customers with a certain number of points for purchases made using the retailer’s credit card(s). When the customer reaches a certain number of points, the retailer issues a Merchandise Certificate redeemable at the retailer’s stores.

These Merchandise Certificate(s) may be used for any merchandise or service sold in the retailer’s stores including restaurants, spa services, alterations and the purchase of gift certificates or gift cards. They may also be used in conjunction with other discount promotions including sales, markdowns and employee discounts. The certificates are treated as tender, i.e., if the purchase price plus sales tax is less than the amount of the certificate(s), the customer receives cash back. If the purchase price plus sales tax is more than the certificate(s), the customer pays the difference. If the customer returns the merchandise, the purchase price plus the sales tax is refunded to the customer. The certificates are not redeemable online and they cannot be used as payment against the customer’s credit card purchases. The certificates expire after ninety days.

A gift certificate may be purchased with cash or other tender or it may be issued pursuant to some form of awards, loyalty, or promotional program. For sales and use tax purposes, a gift certificate is considered to be the same as cash when used to purchase tangible personal property at retail.

In determining whether an instrument is a gift certificate, if the retailer refunds the customer cash or credit when the customer uses the instrument to purchase merchandise of lesser value than the instrument’s assigned value, this is a clear indication that the retailer and the customer consider the instrument to be some form of credit memorandum. Therefore, we would consider the Merchandise Certificates issued by

the above retailer to be a form of credit memorandum like other gift certificates and not a rebate or a cash or trade discount. Accordingly, when the Merchandise Certificates are used as consideration in the sale of tangible personal property at retail, the Merchandise Certificate's value that is used as consideration will be included in the measure of tax. 8/4/03. (2004–2).

280.0640 **Gifts Purchased Under Resale Certificates.** A donor is liable for use tax when he makes a gift in-state of merchandise purchased under a resale certificate, or outside the state. There is no exception on account of a subsequent shipment of the property outside the state. 3/15/60.

280.0660 **Gifts to Charity.** When merchandise purchased for resale has become unsalable and, thus, must be discarded, it may be given to charity or otherwise disposed of without incurring tax liability. 11/28/66.

280.0670 **Gift Versus Loan of Property.** A computer manufacturing company transfers personal computers to selected educational institutions in this state. The recipient institution is free to use the property as it sees fit. However, the institution is under an obligation to return the property to the manufacturer or destroy the property if and when the property becomes obsolete. The computers are shipped by the manufacturer from a point outside this state, and title to the computers pass to the educational institution outside this state pursuant to agreement terms.

The above transaction is a gift subject to a condition and not a mere loan. The critical fact is that, although the transferee may not alienate the property, the transferee has no absolute duty to return it, but may alternately destroy the property upon obsolescence. If there was an absolute duty to return the property, we would treat the transaction as a loan, despite the title provision, because an absolute obligation to return the property would be incompatible with a transfer of title. 5/14/84.

280.0680 **''Grand Opening'' Gifts.** Where gifts and prizes are awarded by a market at its ''grand opening,'' some of which were furnished at no charge to the market by suppliers, and other merchandise was purchased specifically for this use or used from regular stock normally held for sale, none of which were exempt food items, the use tax applies. Measure of tax is cost of merchandise to market. Supplier would be subject to use tax on items donated to market. 4/26/57.

280.0686 **Gravitation II.** ''Gravitation II'' is an automated game paying out tickets every time a player deposits 25 cents into the machine. It also dispenses additional tickets when the player wins. A value of 12 ½ cents is assigned each ticket. A customer, upon presentation of the tickets to the operator, is given credit towards the purchase price of the operator's merchandise.

Since the customer always receives tickets redeemable for merchandise when he deposits his money, the operator should not be treated as the consumer of any of the merchandise delivered to the customer, notwithstanding the fact that some portion of the tickets redeemed may have been obtained by the customer through skill or chance. Sales tax would be based on the gross receipt from this machine pursuant to Regulation 1670(d).

If the customer exchanges his tickets for merchandise from a third party pursuant to an agreement between the machine operator and the third party, the tickets would then be purchased back by the operator from the third party for a stated amount. In this situation, the third party is the retailer responsible for reporting tax based on the amount received by the third party pursuant to Regulation 1671(f). 8/19/82.

280.0700 **Gross Receipts—Redemption Value as.** The redemption value of a coupon distributed by a manufacturer to a consumer, which is redeemed by a local retailer for the manufacturer's product, constitutes taxable gross receipts from the sale of the product, where the retaler will be reimbursed the price of the product by the manufacturer. 9/12/67.

280.0708 **Healthwise Handbook.** A California HMO had handbooks printed out of state and the printer shipped the handbooks by common carrier to postal centers in California. The postal service delivered the handbooks directly to the members in California. There was no charge to the member for the handbook. The handbooks are preaddressed and postage paid when they come to the California postal facility.

In this case, the gift of the handbooks takes place outside the state when the printer delivers them to the common carrier for shipment directly to the recipient in view of the fact that their journey is not interrupted for any purpose unrelated to their delivery to the HMO's members. Thus, there is no use of the handbooks made by the HMO in California to which tax applies. 8/18/95.

280.0715 **Ice Cubes Used in Complimentary Drinks.** Ice cubes sold to airlines for the purpose of placing them in complimentary drinks for passengers are not being resold by the airlines, but rather consumed by the airlines. Thus, ice cube sales to airlines for such purposes are subject to sales and use tax. 10/4/94.

280.0720 **Incentive Awards.** Premium houses are retailers of premium merchandise which they transfer to recipients in exchange for stamps, coupons or points, which constitute valuable consideration.

Where an employer gives its salesmen ''points'' or other indicia as incentives, and a premium house redeems the points for merchandise which it transfers to the salesmen, the premium house and not the employer is the retailer. If the merchandise is transferred by the employer directly to the salesmen as an incentive award, the employer is the retailer. In either case, the retail sale is made to the salesman. The salesman and not the employer is subject to any use tax that may apply. 9/11/67.

280.0740 **Incentive Program.** Grocers throughout the nation are given points for selling manufacturer's products. They are also supplied with a premium catalog listing items which may be acquired by a grocer upon the surrender of points earned at the rate of 1H per point.

The manufacturer is selling the premium merchandise to the grocers whether it ships the merchandise or directs a supplier so to do. The selling prices is the number of points surrendered by the grocer at the rate of 1H per point.

Delivery of such premium merchandise to an out-of-state grocer is an exempt interstate commerce transaction. However, deliveries to California grocers are subject to sales tax. 8/31/55.

280.0760 **Incentive Program.** Salesmen and distributors of a corporation are awarded points based on the results they achieve, and they may redeem those points for merchandise. That is, the corporation is transferring merchandise to salesmen or distributors in exchange for services rendered. Accordingly, the transfers are for consideration and constitute sales. Since there is no agreed monetary valuation between the corporation and the salesmen and distributors, it appears that the best method for determining the taxable selling price of the merchandise is to use the amount paid by the corporation for that merchandise. 3/21/57. (Am. 2001–3).

280.0765 **Interstate Commerce—Marketing Aids.** A hardware wholesaler provides marketing aids to its customers under conditions making it the consumer of the marketing aids. The marketing aids are purchased from a manufacturer in Mexico who has an office and a warehouse in California. The warehouse is used for temporary storage prior to delivery to the manufacturer's customers by common carrier.

If the manufacturer fills orders from the wholesaler for shipments to the wholesaler's customers outside California, using goods from the manufacturer's California warehouse, the sale is not subject to either sales tax or use tax. Although the sale is to a consumer (wholesaler) and the sale occurs in California, the requirement that the merchandise be shipped out of state via common carrier, and it is so shipped, exempts the sale from sales tax under Revenue and Taxation Code section 6396. The fact that the property was not purchased for use in California and was not used in California prevents the use tax from applying. 2/16/90.

280.0766 **Items Donated for Auction Sale.** Only one tax is imposed when an automobile purchased by a dealer under a resale certificate is sold at auction through an educational television station which keeps the proceeds and (1) the television station has accepted the automobile for sale subject to return if it is not sold, (2) there is no transfer of registration to the station, and (3) the dealer handles the registration on behalf of the purchaser and reports and pays tax on the sale.

The basis for this conclusion is that the dealer is merely donating the receipts from the sale of the vehicle. If a nonretailer donates the item, tax would apply to the sale of the item at auction. Even though the station may be acting as a trustee or agent, the station is an auctioneer and, therefore, is a retailer assuming it auctions a number of items. 5/15/68.

280.0767 **Lipstick in Exchange for Empty Containers.** A firm enters into a promotional program whereby a customer receives a free lipstick if she returns six empty make-up containers. The containers have no value and are discarded. The firm believes that the lipstick is not taxable as a premium sold along with the other items. The furnishing of the lipstick is a gift of tangible personal property. In this case, it is not a premium furnished upon the purchase of six items. The purchaser has no contract right to the lipstick and the promotion can be terminated at will. Thus, even if the customer had purchased six make-up items, she would not receive lipstick if the promotion had ended. The firm is the consumer of the lipstick furnished and tax applies to its cost. 10/25/96.

280.0768 **Manufacturer's Awards Program** A manufacturer/retailer of pool cleaning equipment sells mainly to distributors. However, it also sells parts to, and provides warranty service for, various preferred dealers. Under a promotional program, pool builders, retailers and service companies who purchased 12 units from one of the distributors would receive a bonus unit directly from the manufacturer. The units are all inventory items that, by terms of the award program, must have been purchased for resale to a pool owner. The bonus unit must also be of the same type as at least 50% of the total units purchased from the distributor. The manufacturer believes that the transfers of these bonus units qualify as quantity sales discounts and should not be subject to tax until the units are eventually resold to consumers by the pool builders, retailers, or service companies.

The bonus units are inventory items which are of the type sold by retailers in the normal course of business and are transferred to the retailers only because the retailers have already purchased numerous units manufactured by the manufacturer. The manufacturer's restrictions are evidence that the bonus units, like the dozen units already purchased, will be resold by the retailer in the regular course of business. We conclude that the sale of the bonus unit is a sale for resale and that no tax is due on the transfer. 5/23/90.

280.0769 **Marketing Aids—Purchased for Resale.** If the seller purchases a type of fungible marketing aids, some of which will be sold for 50 percent or more of the purchase price and some for less than 50 percent of the purchase price, the seller may purchase the aids for resale. Aids which are consumed (sold for less than 50 percent of the purchase price) would be subject to use tax at the time of their initial consumption.

If the seller purchases one type of marketing aid which the seller will provide for more than 50 percent of the cost, those aids may be purchased for resale. But if the seller also purchases a different type of marketing aids which will be provided for less than 50 percent of cost, those aids will be consumed and may not be purchased for resale.

If the seller does not know at the time of purchase which will be sold (for 50 percent or more), the aids may be purchased for resale.

If purchased for resale, use tax must be paid for all aids provided for less than 50 percent of cost, even if sent to out-of-state consumers. Marketing aids provided to out-of-state consumers for less than 50 percent are taxable (subject to use tax on cost) because there is an initial use and, therefore, the moment of taxation is in California at the time the seller delivers the aids to the carrier and transfers title. Marketing aids for which the seller is the consumer which are sent to its out-of-state distribution center and shipped to buyers from the out-of-state location are not subject to tax because the seller does not transfer title to another person in California. 6/4/87.

280.0770 **Museums Open to Students.** A museum's practice of admitting secondary school students free of charge one morning a week as part of a planned school program will be considered to qualify under section 6365(d)(3) as ''a museum which is open to a segment of the student or adult population without

charge.'' The ''segment'' in this case would be all secondary school age children in the Pasadena School District. The museum allowing free admission to children under 12 when they are accompanied by an adult would not, by itself, qualify as being open to a segment of the student population without charge. The free admission for children under 12 being conditioned on a paid admission results in it not being truly a free admission as section 6365(d)(3) requires. 4/4/79.

280.0777 **Phone Cards.** A firm proposes to seek out and find membership organizations that would promote prepaid phone cards in various ways. For example, in return for paying a certain level of dues, such as $100, the member would receive a $20 prepaid telephone card. The prepaid telephone card can be printed with the logo or special message of the sponsoring organization.

Sales of debit cards are not considered to be sales of tangible personal property within the meaning of the Sales and Use Tax Law. Instead, the debit cards are indicia of their prepaid value. Thus, the sale or use of a phone debit card as an indicia of its prepaid value is not subject to sales or use tax. Generally, the person who first sells the card as indicia of its prepaid value would be the consumer of the card, and sales or use tax would apply to the sale of the card to that person. 8/17/95.

280.0780 **Premium with Sale.** Where a retailer offers certain personal property as a premium to former customers who reopen or add to their existing account by the purchase of other merchandise within a limited time, the retailer is reselling the premium merchandise. 5/19/54.

280.0784 **Premium Sold by Oil Company to Dealer.** Sales of premiums to independent dealers are sales for resale, pursuant to Regulation 1670(c), when the premiums are to be given to the dealer's customers only if the customers purchase other specified goods or services. These sales are sales for resale notwithstanding that the oil company's selling price to the dealer is less than 50% of cost.

When the service station dealer delivers a premium, together with a purchase of nontaxable labor, the selling price of the premium will be deemed to the cost of the premium to the oil company or the cost to the independent dealer, whichever is the greater.

If the premium delivered is a nontaxable item (e.g., food product) and the goods required to be purchased are of a taxable nature (e.g., gasoline), the same rule would apply. The sales price of the nontaxable item would be deemed to be the cost of the premium to the oil company or the cost to the independent dealer, whichever is the greater. The premium sales price is deducted from the sales price of the taxable item. If the dealer obtains tax reimbursement on a larger amount, the dealer will be required to pay the excess tax reimbursement to the state.

In situations where the premium is delivered in connection with a transaction involving both taxable and nontaxable charges (e.g., a lube job and an oil change), total consideration received must be allocated among three items (i.e., the premium, the oil change, and the lube job). 9/8/72; 7/10/96.

280.0790 **Premiums.** As part of a retail marketing program, a manufacturer places on the cartons containing its product offers for the sale of property manufactured by another manufacturer. The second manufacturer processes all orders and makes all shipments. The offer makes it clear that the second manufacturer is the seller of the advertised product. Thus, the second manufacturer rather than the first manufacturer is the retailer. 3/30/79.

280.0791 **Premiums.** A cigarette manufacturer included coupons redeemable for merchandise in the cigarette packages. The premiums were available only from the manufacturer.

In this situation, the premiums are regarded as being sold with the cigarettes. There is no additional tax due on the purchase of premiums by the manufacturer or the redemption of the premiums by the consumer. 1/16/73; 5/29/96.

280.0797 **Promotional Games.** Company A creates promotional games for sales programs of manufacturers. The game pieces are attached to manufacturer's products. Since the game was a game of

chance, it is not a premium as contemplated by Regulation 1670(d). The game had no relation to the article sold, but merely was a promotional device. The sale of game pieces to the manufacturer is a retail sale, not a sale for resale.

Charges for creating, monitoring, and administering the game are nontaxable services. 10/25/83.

280.0800 **Promotional and Goodwill Gifts.** Golf clubs and equipment purchased ex-tax for resale and given to professional golfers who demonstrated and sold the equipment were subject to use tax because the equipment and the clubs were gifts for promotional and goodwill purposes. 4/16/70.

280.0820 **Promotional and Goodwill Gifts.** Sales of promotional material to retailers who distribute the material free to their customers for buying certain of their products are taxable retail sales. 9/27/65.

280.0828 **Pro Tournament Meal and Gift Certificates.** A golf club holds golf tournaments in which the majority of the required entry fees are used for prizes in the form of discounts or gift certificates for use at the golf pro shop operated by the golf club. In some tournaments, the entry fee also entitles the entrant to a free dinner at the club restaurant.

The meals provided are subject to tax based on the regular menu price. The inclusion of the meal in the entry fee would not exclude the retail selling price of the meal from tax. The portion of the entry fee not assigned to the meal is a payment for the intangible right to compete in the golf tournament and is not subject to tax.

Tax also applies to the retail selling price of the goods sold to prize winners by the pro shop. The discounts or gift certificates are considered the same as cash prizes. When goods are purchased at the pro shop, the retail selling price is subject to tax because the discount or gift certificate is considered to be merely a form of payment, and it would not be considered that the retail selling price has been reduced. 5/26/76.

280.0833 **Provider of Prizes to Game Shows.** A provider of prizes for game shows bills the game show for an auto but neither possession nor title to the auto is transferred to the game show. Therefore, if the winning contestant opted to accept monies instead of the auto, there is no sale of the auto to the game show since neither possession nor title to the auto, which is necessary for a sale to occur, was transferred to the game show. If title or possession was transferred, and the winning contestant opted for monies instead, upon the auto's return, a returned merchandise deduction is allowed if all the conditions of Regulation 1655 are met. 8/18/86.

280.0840 **Radio Contestant.** Gifts of merchandise to the contestant on a radio or television program are consumed by the sponsor of the program even though the merchandise is shipped directly to the contestant's home from another firm hired by the sponsor. 12/4/53.

280.0860 **Recipe Booklets.** Booklets containing reprints of recipes of food in which specific cooking wines can be used are not exempt labels but are gifts or premiums which are taxable under Regulation 1670 because the booklets are not designed to give instructions on the proper use of a product or warnings to customers as to dangers involved in the use of certain items. 10/24/69.

280.0870 **Sales by Publicly Supported Television Stations.** The measure of tax on the sale of tangible personal property by a publicly supported television station is the sales price of the property to the television station when the following conditions are met:

(1) A viewer makes a contribution to a nonprofit, publicly supported television station and receives tangible personal property upon making the contribution.

(2) The primary purpose of the contribution is to make a donation to support the television station.

(3) There is a significant disparity between the amount of the contribution and the retail value of the property received in connection with the contribution.

If the television station has paid sales tax reimbursement or use tax on its purchase of the property, no further tax is due. 4/23/93.

280.0875 **Sales for Less than 50% of Cost.** A firm sells its product for approximately 25 percent of its cost. The customers are not required to subscribe to any service.

The firm is the consumer of the product and the measure of tax is the cost of the product to the firm. 4/2/93.

280.0880 **Sales Promotion Devices** purchased by a distributor from the manufacturer and sold to the distributor's retailers at cost, or less than cost, are sales for resale by the manufacturer and are taxable retail sales by the distributors, the measure of tax being the actual charge made to the retailer. 5/19/54.

280.0885 **Sales Promotion Program.** A taxpayer who operates a chain of supermarkets entered into an agreement to purchase a certain sales promotion program. The agreement provided that the supplier would furnish, free of cost, display banners, newspaper mats and special punches, but the punches remained the property of the seller and were to be returned upon termination of the program. The agreement provided that all program material would be shipped prepaid and all title to such articles, except for the special punches, would pass from the seller to taxpayer upon delivery to the common carrier. The cost of the program was measured by the number of punch cards which were ordered, i.e., 10 cents per card. It was agreed that all reorders would be on the same terms and conditions stipulated in the initial agreement.

The taxpayer paid $1,000 for a block of 10,000 punch cards which were programmed to award $15,000 in cash prizes on sale of merchandise totaling $1,000,000. Each punch card contained a seal under which designated amounts usually ranging between $1.00 and $100.00. The taxpayer gave the punch cards to its customers. Each time a customer purchased merchandise, his card was punched in the amount of the purchase. When the customer had purchased $100 in merchandise, her card was completely punched. At that time, the taxpayer's employee would break open the sealed portion of the card and give the customer the amount printed under the seal in cash. It also was possible for a customer to participate without making any purchases, since cardholders could have one free punch per week and could thereby complete a card in thirteen weeks and could receive the amount indicated under the seal.

The seller's representative initially gave advice with respect to such issues as to how to distribute the cards, where to keep the cards, etc., to insure that the program started correctly. The seller also furnished instruction sheets. After the program was started all that was needed to continue the program was the necessary supply of correctly programmed punch cards.

Based on the facts, it is concluded that the purchase price of the program was primarily attributable to the punch cards and only incidentally attributable to the advice and assistance given by the seller to help insure that the advertising program was successfully initiated. Accordingly, taxpayer is not purchasing a service in the form of an advertising program. Instead, the taxpayer is purchasing tangible personal property in the form of copyrighted punch cards. Thus, tax applies to purchase price of the punch cards to the taxpayer.

Additionally, in this type of program, the customer receives cash rather than premium merchandise from the retailer or a third party. The receipt of such an amount would appear to be in the nature of a gift rather than a discount, in view of the uncertainty as to the amount, and the fact that such amount has no direct relationship to the amount of the individual customer's purchases. Furthermore, the card may be punched by the store and redeemed by a person without him ever having made a purchase. Under the circumstances, there is no basis at all for considering such amounts (cash prizes) as a discount. 4/29/65.

280.0888 **Sample Kits.** A retailer furnishes sample kits, containing merchandise with a stated retail value, to marketing personnel who use a ''hostess party'' system to market the merchandise. The marketing personnel are allowed to retain the kits if they meet certain sales levels. Under the above conditions, the retailer is a seller, not a consumer, of merchandise provided to marketing personnel as compensation for

their marketing efforts. The transactions are sales because there is a transfer of title and possession of the merchandise for a consideration, namely the marketing work done by the marketing personnel. 9/16/93.

280.0900 **Samples.** Samples furnished to doctors by the manufacturer are self-consumed by the manufacturer and the tax applies to sale price of the ingredients and container to the manufacturer. 12/2/63.

280.0920 **Samples.** Property purchased for resale given as sample, becomes property purchased for purpose other than resale. Tax applies to original sale even though original seller reimburses taxpayer for the cost of the property given away as sample. 5/18/51.

280.0930 **Samples.** A taxpayer purchased sample jewelry in Asia and had fabrication work performed on the samples in Florida. The jewelry was then brought into California. The jewelry was shipped to dealers both inside and outside California as samples for display purposes. The packages in which the jewelry was shipped contained a packing slip noting a price for the samples. Some dealers remitted the price shown. Other retailers did not. The taxpayer regarded the furnishing of the samples as consignments and made no attempt to repossess them.

With respect to payments received from the dealers, the taxpayer is the retailer of the display samples. Tax applies to the sales to California dealers. The storage in California prior to shipment is not taxable.

With respect to transfer of samples to California dealers without payment, the taxpayer is regarded as having made a taxable use of them in California. Use tax applies to the taxpayer's cost.

Inasmuch as the samples shipped out of the state remained the property of the taxpayer, no tax applies because the use in California was excluded from the definition of ''use'' under section 6009.1 and all other use occurred outside California. 3/14/94.

280.0940 **Samples.** A manufacturer of automotive chemicals who ships free samples by common carrier from a point in California to donee is subject to the use tax. A measure of the use tax is the sales price to the manufacturer of the materials which make up the products that are distributed as gifts. 4/15/65.

280.0950 **Samples.** The use of fabric purchased from out-of-state vendors to make sample garments only for demonstration and display to prospective purchasers before being sold to employees is not subject to use tax. Demonstration and/or display in the regular course of business is not included in the definition of use. The sales to employees are sales in the regular course of the taxpayer's business.

The situation differs from Annotation 280.1020 because, in that case, the garments were purchased specifically as a manufacturing aid in producing its own products and not for ultimate sale in the regular course of business after demonstration and display to prospective customers. 3/21/94.

280.0960 **Samples.** A wholesale distributor purchases along with his regular items, samples of these same products. Some of the samples are used in California, but many are sent to out-of-state offices for the purpose of being given away or used in demonstrating the products.

The wholesaler is the consumer of the samples and the sale to him is a taxable retail sale. If the sale of samples is made in California, the fact that the purchaser will use the property out-of-state does not exempt the transaction unless the seller is required to ship the goods to such out-of-state points.

If sample goods are obtained by merely withdrawing a sufficient quantity from regular inventory, such goods may be purchased ex-tax. Upon such withdrawal of samples and use thereof in California the use tax, measured by the cost of such samples will apply.

If sample goods are specifically purchased for such purpose, the giving of a resale certificate is not proper as the sales tax applies to such purchase. 12/22/53.

280.0970 **Samples.** A taxpayer purchases items used by its salespersons as product samples. The supplier pays a rebate to the taxpayer based on the taxpayer's annual volume of purchases for resale. The rebate is limited to a maximum which equals the cost of the samples purchased. The rebate is not regarded as a reduction in the price paid for the samples, thus tax is due on the samples based on the full amount originally paid for them. 1/12/76.

280.0980 **Samples.** A paint manufacturer was the consumer of color cards and color chips which it provided to retailers without charge to facilitate the sale of the manufacturer's paid products. The sales aids did not qualify as exempt labels because they were not intended to be affixed to property for sale. They did not constitute premium merchandise because they were not intended to be given as a premium for the purchase of other property. 7/6/67.

280.1000 **Samples.** Use tax applies to dental adhesive powder purchased ex-tax for resale, packaged as samples and distributed through the mails to persons outside the state. 12/16/65; 12/20/65. (Am. M99–1).

280.1020 **Samples.** A manufacturer of women's apparel which purchases garments of other manufacturers to use as style samples is liable for use tax on the cost of the samples, as well as for sales tax on gross receipts derived from their subsequent sale. The manufacturer's use of the garments in designing its own products is a use other than retention, demonstration or display while holding the garments for resale. 10/14/64.

280.1040 **Samples.** An out-of-state manufacturer is not liable for California use tax with respect to sample merchandise mailed or shipped by the manufacturer from a point outside this state directly to prospective purchasers in California. 11/25/55.

280.1060 **Samples.** Samples distributed in this state by salesmen of out-of-state retailer, use tax applies to such use by retailer even though at time of purchase retailer did not know where sample would be ultimately used. 1/28/52.

280.1080 **Samples.** Style samples are subject to use tax if purchased ex-tax for resale and then used to perfect or copy garment styles. However, ''piece good yardage'' purchased and used for manufacturing coats is not subject to use tax although less than 25 yards were purchased and the yardage was draped over models to aid the manufacturer in making or designing the garment to be manufactured. 11/19/65.

280.1085 **Samples—Carpet.** An out-of-state carpet manufacturer makes a taxable use of carpet samples in California when the manufacturer addresses the samples to retailers but ships the samples to the manufacturer's California employees who then forward the samples at no charge to the retailers.

Until the employees in California forward the samples to the retailers, the manufacturer has not relinquished ownership of the samples. Therefore, the taxable use, i.e., the giving of the samples to the retailers, occurs in California. 8/17/87.

280.1090 **Samples and Donations of Wine.** A taxpayer purchases bottles, corks, labels, and foil under a resale certificate. The property is fabricated into containers for wine. Some bottles of wine are given away as samples or donated to organizations by shipping them out of state.

Since the containers are given away and not sold, California has nexus to tax the taxpayer's use of these containers as self-consumed tangible personal property. The taxpayer makes a gift of the containers and their contents within this state. To perfect a gift, there had to have been delivery. Delivery occurred in this state when the company deposited the containers into the possession of an independent shipper for transportation to the donee. Such delivery is constructive delivery and acceptance of the gift is implied. *Burkett* v. *Doty* (1917) 32 Cal.App. 337. Use tax is due on the purchase price of the components of containers used to ship the samples and donations. 7/31/90.

280.1096 **Samples vs. Marketing Aids—Carpets.** The term samples should be used only in reference to area rugs or carpets which are held for demonstration and display and are subsequently sold to customers.

On the other hand, carpet remnants that are bound together to form swatch books are regarded to be marketing aids, and the rules explained in Regulation 1670 apply. Thus, a person such as a manufacturer or wholesaler is the consumer of a swatch book which the person transfers for less than 50 percent of that person's purchase price. For the manufacturer, the purchase price is generally the purchase price of the materials it incorporates into the marketing aid. A person is the seller of the marketing aids which it transfers for 50 percent or more of that person's purchase price and sales or use tax applies to the sales price charged the customer for the swatch book. 9/26/95.

280.1097 **Samples Sold to Salesmen.** A manufacturer sells merchandise samples to its salespersons at 50% off the regular price. When the sample is no longer useful, the salesperson is at liberty to dispose of it as he wishes. He may keep it, give it away, or sell it for any price he can negotiate and keep the proceeds.

The sales to the salesperson are taxable sales even though the only use of the samples may be demonstration and display, because this use does not occur while the samples are being held for resale in the regular course of business. Any subsequent sale of the sample by the salesperson is optional and purely incidental, and in the same category as the disposal of any fixture, machine, auto, etc., after its useful life is finished. If the salesperson later sells it to a retail store, he would not incur tax liability if the store purchases it for resale. The salesperson would incur liability on retail sales if he made three or more sales in any 12-month period. 11/18/58.

280.1100 **Service Stations.** Transfer of premium merchandise to customers by service stations are sales whether paid for entirely with points, entirely with cash or partly with points and partly with cash. The taxable selling price is the posted money value of the merchandise. 1/18/56.

280.1140 **Stock in Trade—Gift of.** Merchandise purchased for resale and used instead for the purpose of making a gift is not exempt from use tax. A gift made of inventory stock purchased ex-tax for resale is subject to the use tax since a use was made of the merchandise in California other than retention, demonstration, or display while holding such property for sale in the donor's regular course of business. Although the donor in this state ships the gift to the donee out of state, the making of the gift constitutes a taxable use in this state and the imposition of the use tax does not constitute an unconstitutional burden on interstate commerce. 3/21/67.

280.1144 **Promotional Program—Sweepstakes.** Company A is a California retailer with retail outlets in California and other states. Its warehouse is located in California. Company A enters into a contract with Company B to provide $300,000 of merchandise for a sweepstakes promotion. Among other things, one of the purposes of the contract is to allow Company C, through its agent Company B, to obtain access to promotional opportunities afforded by Company A's mailing list and retail stores.

The prize fund for the sweepstakes is $300,000 in cost of A's merchandise. B pays A the cost of property shipped each month plus 1.2% carrying cost on the value of the unshipped balance of the unawarded merchandise. Under these circumstances, A is the retailer of the merchandise. Tax applies to its cost price of the merchandise plus the 1.2% carrying cost.

As part of the contract, B pays A a portion of the cost of certain catalog costs. This reimbursement does not reduce the measure of tax on the purchase of the catalogs by A nor does it represent additional gross receipts from the sale of merchandise. It represents reimbursement for space in the catalog.

As part of the contract, Company C will issue merchandise certificates redeemable by A. These certificates are in lieu of discounts which A normally would provide to its customers. B, in turn, will payA85% of the face value of the merchandise certificates. The amount received by A are gross receipts from a sale. B is acting as C's agent in making payment to A. Deliveries of merchandise in California are subject to tax.

Another part of the contract provides that A will pay B a percentage of total sales made from a specific catalog. This payment is in consideration for C's advertising in the catalog. The payment is in the form of A's merchandise certificates. The distribution of the certificates is at B's discretion.

Under these circumstances, A is the consumer of any merchandise which it ships in redeeming the merchandise certificates. Tax applies to all withdrawals of merchandise from the California warehouse in redeeming these certificates even though some merchandise is shipped outside the state. The withdrawal from inventory for this purpose constitutes a ''use'' in this state. 8/20/89.

280.1150 **Transfer of Auto to Contest Winner.** A California employee has an automobile which her employer leased from another firm. As the result of winning a contest, she is to receive the car. The California employee is not subject to the use tax. However, the contest sponsor (apparently the employer) will owe use tax if it has not paid tax on its acquisition of the auto. 2/24/69.

280.1155 **Transfer with No Obligation to Pay.** A transfer of property which involves no suggested minimum donation and no obligation to pay the transferor even an uncertain amount is regarded as a gift, even if the transferee thereafter gave money to the transferor. Tax would not apply to this transfer and the transferor would be regarded as the consumer of the property which was provided as a gift. 1/12/90.

280.1158 **Unexposed Film Received in Connection with Film Processing.** A photo finisher distributes unexposed rolls of photographic film to customers who contract to have the photo finisher develop exposed film and to produce prints therefrom. The unexposed roll of film is given to the customer at the time he places the order for developing and prints. A separate charge is made for the prints and for the developing. The developing charge is claimed to be nontaxable pursuant to Regulation 1528(b)(3)(a). No specific charge is made for the unexposed film. In some instances the customer fails to pick up the order and pay the agreed charges. No attempt is made to collect these charges.

Under the above situation, the unexposed film, the finished prints, and the developing service all represent consideration received by the customer in exchange for the payment of the agreed contract price. While the customer receives the unexposed film prior to the time he receives delivery of the prints and developing service, it is nevertheless clear that the customer receives the unexposed film only if he agrees to pay the price specified for the prints and the developing and not as a gratuity. Accordingly, the unexposed film must be regarded as sold rather than self consumed. This conclusion is not altered by the failure of the photo finisher to enforce collection with respect to persons who fail to pick up their finished prints and negatives. The failure to collect the contract price on these transactions is based on business expediency rather than the absence of a remedy.

The delivery of the unexposed film is considered to be a premium under Regulation 1670(c). This section also provides for an allocation of gross receipts to the retail sale of a premium sold with a food product or other item not subject to sales tax. Since the customer is required to pay the entire contract price in order to obtain the premium, it is consistent with Regulation 1670(c) to allocate a portion of the total contract price to the unexposed roll of film sold and delivered as part of the contract. 4/17/70.

280.1160 **Use of Prize.** ''X'' Co. distributes chances on a free automobile to customers as a means of furthering its sales of ''Y'' Co. products. The automobiles are purchased tax-paid by ''X'' Co. Following the award, ''Y'' Co. reimburses ''X'' Co. for the cost of the automobile. ''X'' Co. makes a taxable use of the automobiles in furthering its sales. The transfer of the automobile to the holder of the winning ticket in return for reimbursement paid by ''Y'' Co. is a taxable sale. For sales tax purposes it is of no consequence that a seller receives consideration from a person other than the person to whom he transfers the tangible personal property. 8/13/57.

280.1165 **Use of Property Purchased for Resale—Promotional Gifts.** Property purchased ex-tax for resale and subsequently shipped free of charge as a promotional gift to an out-of-state customer is subject to California use tax. The taxable ''use'' occurs in California when the property is transferred to a common carrier, prior to its shipment to the out-of-state customer. At the time of shipment, the donor has made all the use of that property that it ever will and has given up all power incident to ownership.

On the other hand, property shipped from ex-tax inventory in California to one of the donor's out-of-state business locations for use as a gift at that location is not subject to use tax. The tax does not apply because the use to which the tax would otherwise attach occurs outside of California. 10/6/93.

280.1170 **Vending Machines.** A vending machine is filled with small toys which requires the skill of the player in operating a claw before a toy is dispensed. If an appreciable skill is required, and the primary purpose of the machine is to provide entertainment by challenging a player to display the skill of operating the jaw, no tax would apply to the charge for that entertainment. The vending machine operator would be the consumer of the product dispensed.

In general, if a vending machine dispenses tangible personal property to nearly everyone, then the primary purpose of the machine is to sell tangible personal property and the tax application on the sales from this vending machine is governed by Regulation 1574. If there is no assurance that a player will ever receive any tangible personal property, i.e., that receiving any tangible personal property is dependent upon the player's skills or knowledge, then receipts from these types of vending machines are not subject to tax. 6/18/93.

280.1175 **Wedges/Ledges.** ''Wedges/Ledges'' is an automated game of skill and chance since tokens are dispensed to a customer only when the customer wins. The tokens can be exchanged at the arcade for merchandise. Under the above circumstances, the machine operator is considered the consumer of the merchandise for which the tokens are exchanged and the tax applies with respect to the sale to or the use of the merchandise by the operator pursuant to Regulation 1670(d). 8/19/82.

280.1180 **Wholesalers Furnishing Premium to Retailers, General Rules Stated.** Where tangible personal property is furnished as a premium together with other tangible personal property sold, the transaction is regarded as a sale of both articles. Thus, where the principal merchandise is sold for resale and hence the sale thereof is not taxable, but included in the ''deal'' are premiums which are not sold for resale, it is necessary for the seller of the ''deal'' to ascertain that portion of the total charges made properly allocable to the premiums and return the tax measured by such amount. 3/24/50.